

### **REMARKS**

This responds to the Office Action mailed on March 1, 2004. No claims are amended, cancelled, or added. As a result, claims 1 – 91 remain pending in this application.

#### **Information Disclosure Statement**

The Office Action stated that the Information Disclosure Statement filed October 10, 2003 fails to comply with the provisions of 37 C.F.R. 1.97, 1.98 and MPEP §609 because the literature publication (Vitatron Medical Harmony) does not contain a date of publication. However, Applicant has already received (with the Office Action mailed on March 2, 2001) an Form 1449 initialed by the Examiner on February 28, 2001 indicating that this reference has been already been considered by the Examiner. Moreover, although the IDS stated that the exact date of this publication was unknown, it did note that it was cited in later publications on September 11, 1991 and September 5, 1990. Accordingly, Applicant respectfully submits that this literature publication has already been considered as prior art by the Examiner during the examination of the present patent application.

#### **Requests For Information**

In the Office Action, the Examiner requested under 37 C.F.R. 1.105, information relating to the IDS publication “Pacemaker System Guide for PUSLAR MAX II; Multiprogrammable Pacemakers.” More particularly, the Examiner requested the complete document. However, Applicant is submitting an Affidavit under 37 C.F.R. 1.132 to establish that the portions of that document that relate to VRR were derived from Applicant—Applicant does not admit that this document constitutes prior art against the present patent application. Therefore, Applicant respectfully submits that this Affidavit renders the Examiner’s request for the complete document moot. Accordingly, Applicant respectfully requests that this particular Request for Information be withdrawn.

In the Office Action, the Examiner also requested that the “attorney/agent and inventors submit any non-patent literature, published application, or patent (U.S. or foreign) that relates to

the claimed invention, specifically to ventricular rate regularization, that was published before the effective filing date of this application (May 21, 1999). Applicant's counsel has reviewed the file and requested that the inventors provide any such information (beyond what has already been submitted in previous Information Disclosure Statements). Applicant's counsel has not become aware of any such information beyond what has already been submitted in previous Information Disclosure Statements. Accordingly, Applicant respectfully requests that this particular Request for Information be withdrawn.

§102 Rejection of the Claims

Claims 1, 2, 6, 8, 26-29, 33, 35, 53, and 54 were rejected under 35 U.S.C. 102(a) as being anticipated by "Pacemaker System Guide for Pulsar Max II; Multiprogrammable Pacemakers." Applicant is submitting herewith an Affidavit under 37 C.F.R. 1.132 to remove this reference as a basis for this rejection. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

§103 Rejection of the Claims

1. Claims 58 and 59 were rejected under 35 USC § 102(a) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over the "Pacemaker Publication." Applicant assumes that this reference is the same reference as referred to above for the rejection under 35 U.S.C. 102(a). Applicant is submitting herewith an Affidavit under 37 C.F.R. 1.132 to remove this reference as a basis for this rejection. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

2. Claims 63-65, 67, 68, 71, 73, 88, 89, and 91 were rejected under 35 USC § 103(a) as being unpatentable over the Pacemaker Publication. Applicant assumes that this reference is the same reference as referred to above for the rejection under 35 U.S.C. 102(a). Applicant is submitting herewith an Affidavit under 37 C.F.R. 1.132 to remove this reference as a basis for this rejection. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

3. Claims 23-25, 50-52, and 62 were rejected under 35 USC § 103(a) as being unpatentable over the Pacemaker Publication. Applicant assumes that this reference is the same reference as referred to above for the rejection under 35 U.S.C. 102(a). Applicant is submitting herewith an Affidavit under 37 C.F.R. 1.132 to remove this reference as a basis for this rejection. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

*Allowable Subject Matter*

Applicant acknowledges the allowance of claims 55-57 and 90.

Claims 3-5, 7, 9-22, 30-32, 34, 36-49, 60, 61, 66, 69, 70, 72, and 74-87 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Nevertheless, in view of the above, Applicant respectfully submits that these claims are patentably distinct, and therefore Applicant respectfully requests withdrawal of this basis of rejection of these claims.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

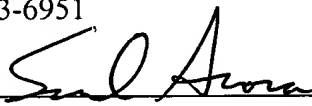
Respectfully submitted,

DAVID B. KRIG ET AL.

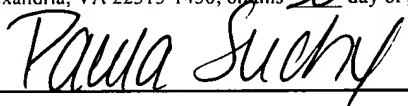
By their Representatives,


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Date June 30, 2004

By   
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Reg. No. 42,267

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, MS: Amendment, P.O. Box 1450, Alexandria, VA 22313-1450, on this 30 day of June, 2004.

  
Name

  
Signature